463

16 L. 365

Judge Nelson

SUPREME COURT OF THE UNITED STATES.

No. ~~226~~. 190.

THE BALTIMORE AND OHIO RAILROAD COMPANY, PLAINTIFFS IN ERROR,

vs.

WILLIAM PATTERSON.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MARYLAND.

GOVERNMENT PRINTING OFFICE.

Mot to dismiss
Jan 27
denied

SUPREME COURT OF THE UNITED STATES.

No. 326.

THE BALTIMORE AND OHIO RAILROAD COMPANY, PLAINTIFFS IN ERROR,

vs.

WILLIAM PATTERSON.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MARYLAND.

INDEX.

	Original.	Print.
Summons	1	3
Declaration	2	4
Answer	5	7
Commission	12	9
Deposition of August Steiger	15	11
" John Collins	17	12
" W. T. Dewdney	19	13
" P. W. Fowler	23	15
Letters	27	16
Verdict	33	20
Judgment	33	20
Writ of error	35	21
Citation	36	21
Bond	37	22
Clerk's certificate	39	22

1 UNITED STATES OF AMERICA,
District of Maryland, to wit:

At a circuit court of the United States, in the fourth circuit in and for the Maryland district, begun and held at the city of Baltimore, on the first Monday in November, in the year of our Lord one thousand eight hundred and sixty-two.

Present: The house, William F. Giles, judge Maryland district; Wm. Price, esq., attorney; Washington Bonifant, esq., marshal; Thomas Spicer, clerk.

Among other were the following proceedings, to wit:

WILLIAM PATTERSON
THE BALTIMORE AND OHIO RAILROAD COMPANY.

Be it remembered that on the fifth day of April, in the year of our Lord eighteen hundred and sixty-two, the said William Patterson, by Henry Winter Davis, his attorney, prosecuted and sued forth out the circuit court here the writ of the United States of America, directed to the marshal of the Maryland district, in the words and of the term following, to wit:

THE UNITED STATES OF AMERICA,
District of Maryland, to wit:

To the marshal for the Maryland district, greetings:

We command you that you summon the Baltimore and Ohio Railroad Company, that, all excuses and delays set aside, they be and appear before the judges of the circuit court of the United States for the fourth circuit in and for Maryland district, to be held at the United States court *court* room, in the city of Baltimore, on the first Monday in April, (inst.,) to answer unto William Patterson, a
2 citizen of the State of Pennsylvania, in a plea of trespass on the case, &c. Hereof you are not to fail at your peril. And have you then and there this writ.

Witness the honorable R. B. Taney, chief justice of our Supreme Court, the first Monday in December, in the year of our Lord one thousand eight hundred and sixty-one.

H. W. D. Issued 5 April, 1862.

THOS. SPICER,
Att'y Cir. Court.

And the aforesaid William Patterson, by his attorney aforesaid, declared against the said Baltimore and Ohio Railroad Company, in the plea aforesaid, in form following, to wit :

UNITED STATES OF AMERICA,
District of Maryland, sct :

In the circuit court of the United States for said district, William Patterson, a citizen of the State of Pennsylvania, by Henry Winter Davis and Archibald Stirling, jr., his attorneys, complains of the Baltimore and Ohio Railroad Company, a body corporate by the laws of the State of Maryland, of a plea of trespass on the case, for that whereas, heretofore, to wit, on the eleventh day of March, in the year of eighteen hundred and sixty-two, to wit, at the city of Washington, in the District of Columbia, the plaintiff was engaged in his business as a teamster in the service of the government of the United States, and was then and there controlling and driving a certain wagon, and certain horses drawing the same, upon a
3 certain public and common highway in the said city; and whereas the defendant was then and there, to wit, on the day and year aforesaid, possessed of a certain train of cars and of a certain locomotive drawing or propelling the same, which said locomotive and train of cars, in possession of said defendant, was then and there under the care, government, and direction of certain then servants of the defendant, who were then and there governing, directing, controlling, and causing the same to be propelled along and upon a certain railway track, which said track was then and there laid down in and upon the said public and common highway, to wit, at the city of Washington aforesaid. Nevertheless the said defendant, by its said servants, so carelessly and improperly directed, governed, and caused to be propelled the said locomotive and train of cars, that by and through the carelessness, negligence, and improper conduct of the defendant, by its said servants in that behalf, the said locomotive and train of cars then and there ran and struck with great force and violence against the plaintiff, to wit, at the city of Washington aforesaid, whereby the plaintiff's left arm was then and there bruised, wounded, broken, mashed, and cut, so that the plaintiff lost the same, and divers other parts of his body bruised and wounded, and the plaintiff was then and there also otherwise greatly hurt and wounded, and was sick and disordered for a long space of time, to wit, hitherto; and by reason of the said breaking, mashing, and cutting of
4 his left arm, the plaintiff has lost the same, and has lost the power of continuing in his said business as a teamster, and is thereby specially disqualified from his said bnsiness, and is maimed for life; and also, by reason of the premises, was forced to expend a large sum of money in the care and attending of his said wounds and bruises, to the damage of the plaintiff of ten thousand dollars. And therefor he brings suit.

HENRY WINTER DAVIS,
ARCH'D STIRLING, Jr.,
Plaintiff's Attornies.

At which first Monday in April, in the year of our Lord 1862, being the day of the return of the aforegoing writ, comes into the circuit court here the said William Patterson, by his attorney aforesaid, and the marshal of Maryland district aforesaid, to wit, Washington Bonifant, gentleman, to whom *to whom* the said aforegoing writ was in form aforesaid *directors*, made return thereof to the court here, thereon endorsed, to wit:

Summoned.

WASHINGTON BONIFANT,
U. S. Marshal.

And thereupon, on motion of the said William Patterson, by his attorney aforesaid, it is rule by the court here that the Baltimore and Ohio Railroad Company answer to the declaration aforesaid of the said William Patterson, in the plea aforesaid, or judgement by the court here will be entered against it, default thereof. And the said Baltimore and Ohio Railroad Company, as before, and pray
5 leave of the court here to until the first Monday in November next, and then to answer to the declaration aforesaid of the said William Patterson, in the plea aforesaid, and to it *it* is granted the same day is given to the aforesaid William Patterson. And the said Baltimore and Ohio Railroad Company, by its attorney aforesaid, that it is not guilty of the said trespass in manner and form as the said William Patterson against it hath complained,and of this it puts himself upon the country, &c., and the said William Patterson in like manner, &c.

Therefore, let a jury thereon appear before the court here on the first Monday in November next, by whom, &c., why neither, &c., to recognize, &c., because as will, &c.; the same day is given to the said parties then and there, &c. The parties aforesaid, by their attorneys, filed in the circuit court here an agreement in the way following, to wit:

In the circuit court of the United States for the district of Maryland.

PATTERSON
vs.
BALTIMORE AND OHIO RAILROAD CO.

It is agreed that a commission to take testimony in the cause and bail issue, by consent, to Wm. B. Webb, commissioner of the United States for the District of Columbia, on the 15th May, 1862.

H. WINTER DAVIS,
A. STERLING, Jr., *Pl'nt'ff.*
JNO. H. B. LATROBE, *for Def't.*

6 And the parties aforesaid, by their attorneys aforesaid, filed in the circuit court here interrogatories and cross-interrogatories in the words following, to wit:

In the circuit court of the United States for the district of Maryland.

WILLIAM PATTERSON
vs.
THE BALTIMORE AND OHIO RAILROAD COMPANY.

Interrogatories to be propounded to witnesses on behalf of the plaintiff.

1. Do you know the parties to this suit, or either, and which of them, and the occupation of the plaintiff?

2. Were you present at the time that the plaintiff's arm was injured in Washington city, in the month of March, or April, in the year 1862? And if you were, please state how the said injury was occasioned, and all the circumstances therewith connected. By what instrument or machine was the injury done, and how was it occasioned; where the cars or engine of the defendants were on that day just before the injury; which way they were moving; whether any whistle was blown or bell rang to warn persons of their approach; whether any one, and who, warned the conductor that any person or anything was on the track, and what answer the conductor made to such warning; whether he stopped the train, or not, *as* said warning, and how far the train was from the plaintiff when you first saw it, or when any warning was given to the conductor; and what the
7 plaintiff was doing when the cars were approaching him; and whether the plaintiff was injured or not by the cars, and how; in what part of the body, and to what extent; and whether or not he is now, since recent injury, capable of pursuing his occupation of teamster. And state in what street said injury occurred, and for what said street or avenue was used by the government, and by the Baltimore and Ohio Railroad Company, at the time of said injury; and whether said plaintiff was, at the time of said injury, engaged in any, and what, duty or reason of employment under the orders of the government; and whether or no the injury, how received, is of such a character as permanently to disable such person from his occupation as teamster. Not anything further you know of any benefit to either party.

H. WINTER DAVIS,
A. STERLING, JR, *for Pl'ff.*

In the circuit court U. S. for the Maryland district.

WILLIAM PATTERSON
vs.
BALTIMORE & OHIO RAILROAD COMPANY.

Cross-interrogatories to be propounded to witnesses to be produced on the part of the plaintiff.

1. What is your occupation?

2. If you say you the accident referred to in the 2nd interrogatory, describe your position at the time. Where were you standing—how far off?

3. If you say that the plaintiff was injured by a railroad train, describe the train. Was it a passenger or burden train; and if the
8 latter, what was the character of the cars—house cars, coal cars, or what?

4. If the plaintiff was injured by a train, state the manner of the injury. By what car or cars was it inflicted—by the leading car, or by what other car or cars? How far did the train move after the accident?

5. Had you been paying attention to the movement of the train at the time of the accident? Had you noticed the position of plaintiff before the accident; and if yea, what was it?

6. State particularly what the plaintiff was doing just before he was hurt.

7. State any more matters which you may know, beneficial to the defendant.

JNO. H. B. LATROBE, *for Def'ts.*

And the said William Patterson, by his said attorney, prays the court here that commission may issue to the city of Washington, in the District of Columbia, to examine his case in this cause, and that the depositions returned with the said commission may be read in evidence at the trial hereof; and it is granted him; whereupon the said parties, by their attorneys aforesaid, praying the court here that the same commission may be directed to William B. Webb, of the city of , to where, in the District of Columbia, a returnable, with all convenient speed. Thereupon the same commission accordingly issues in the words and of the term following, to wit:

9 DISTRICT OF COLUMBIA,
County of Washington, to wit:

I, William B. Webb, a commissioner of the United States for the District of Columbia, duly appointed by the circuit court of the District of Columbia, under and by virtue of the act of Congress in that behalf made and provided, do hereby certify that under and by virtue of my said office, and of the commission to me directed and hereunto annexed, directing me to examine evidence in a cause depending in the circuit court of the United States for the fourth circuit, in and for the Maryland district, between William Patterson, plaintiff, and the Baltimore and Ohio Railroad Company, defendants, that I did first take the oath annexed to the said commission, and did direct the witnesses whose defentives are thereonto annexed, to be and appear before me, at a place designated in the summons to the said witnesses; that I did then and there examine the said witnesses upon their corporal oaths, administered upon the Holy Evangely of Almighty God, touching their knowledge or remembrance of anything that might relate to the cause aforesaid; that I did put to each of the said witnesses each and every of the said interrogatories and cross-interrogatories annexed to and made part of the said commission; that the defentives of the said witnesses, so taken by me as aforesaid, were by me wholly reduced to writing in the presence of the said witnesses, were by the said witnesses signed in my presence, and that the said defentives,

together with the annexed commission, once by me closed out
10 and addressed to said circuit court of the United States for the fourth circuit, in and for the Maryland district. And I do further certify that I am not of counsel for either of the parties, nor in any way interested in the court of the said cause.

Witness my hand and seal this 14th day of June, 1862.

W. B. WEBB, [SEAL.]
U. S. Comm'r.

In the circuit court of the United States for the district of Maryland.

WILLIAM PATTERSON
vs.
THE BALTIMORE AND OHIO RAILROAD COMPANY.

Interrogatories to be propounded to witnesses on behalf of the plaintiff.

1. Do you know the parties to this suit, or either and which of them, and the occupation of the plaintiff?

2. Were you present at the time that the plaintiff's arm was injured in Washington city, in the month of March or April, in the year 1862? And if you were, please state how the said injury was occasioned, and all the circumstances therewith connected; by what instrument or machine was the injury done, and how was it occasioned; where the cars or engine of the defendant were on that day just before injury; which way were they moving; whether any whistle was blown or bell rung, to warn persons of their approach; whether any
11 one, and who, warned the conductor that any person or anything was on the track, and what answer the conductor made to such warning; whether he stopped the train or not on such warning, and how far the train was from the plaintiff when you first saw it, or when any warning was given to the conductor; and what the plaintiff was doing when the cars were approaching him; and whether the plaintiff was injured or not by the cars, and how, in what part of the body, and to what extent; and whether or not he is ever since such injury capable of pursuing his occupation of teamster; and state in what street said injury occurred, and for what said street or avenue was used by the government, and by the Baltimore and Ohio Railroad Company, at the time of such injury, and whether said plaintiff was at the time of said injury engaged in any, and what, duty, or service, or employment under the orders of the government, and whether or not the injury he received is of such a character as permanently to disable such person from his occupation as teamster.

State anything further you know of any benefit to either party.

H. WINTER DAVIS,
A. STIRLING, JR.,
for Plaintiff.

In the circuit court of the United States for the Maryland district.

WILLIAM PATTERSON
vs.
BALTIMORE AND OHIO RAILROAD COMPANY.

12 *Cross-interrogatories to be propounded to witnesses to be produced on the part of the plaintiff.*

1. What is your occupation?

2. If you say that you saw the accident referred to in the interrogatory, describe your position at the time, Where were you standing —how far off?

3. If you say that the plaintiff was injured by a railroad train, describe the train. Was it a passenger or burden train; and if the latter, what was the character of the cars—house cars, coal cars, or what?

4. If the plaintiff was injured by a train, state the manner of the injury. By what car or cars was it inflicted—by the leading car, or by what other car or cars? How far did the train move after the accident?

5. Had you been paying attention to the movement of the train at the time of the accident? What called your attention to the accident? Had you noticed the position of the plaintiff before the accident; and if yea, what was it?

6. State particularly what the plaintiff was doing just before he was hurt.

7. State any other matter which you may know beneficial to the defendants.

JOHN H. B. LATROBE,
for Def'ts.

THE UNITED STATES OF AMERICA,
District of Maryland, to wit:

To William B. Webb, commissioner of the United States for the District of Columbia, greeting:

Be it known, that you are appointed commissioner to examine evidences in a cause now depending in the circuit court of the
13 United States for the fourth circuit in and for the Maryland district, between William Patterson, plaintiff, and the Baltimore and Ohio Railroad Company, defendants. Therefore you are requested, having first taken the oath hereunto annexed, and also administered the annexed oath to the person whom you shall appoint as clerk, to attend the execution of this commission, that at such time and place as to you shall seem convenient, you cause to come before you all such evidence as shall be named or produced to you by either the plaintiff or defendants; and that you examine them on their corporal oaths, to be by you administered upon the Holy Evangely of Almighty God, touching their knowledge or remembrance of anything that may relate to the cause aforesaid; and having reduced the depositions of the witnesses so taken by you into writing, you send the same, with this commission closed, under

your hand and seal, to the said circuit court, with all convenient speed.

Witness: The honorable R. B. Taney, chief justice of our Supreme Court, the first Monday in December, in the year of our Lord eighteen hundred and sixty-one.

THOS. SPICER,
Cl'k Cir. Cr't.

H. W. D.
A. S., jr.

Issued 2 June, 1862.

PATTERSON
vs.
BALTIMORE & OHIO RAILROAD CO.

In the circuit court of the United States for the district of Maryland.

It is agreed that a commission to take testimony in this cause shall issue, by consent, to William B. Webb, commissioner of the
14 United States for the District of Columbia, on the 15 May, 1862.

H. WINTER DAVIS.
A. STIRLING, JR.,
For Pl'ff's.

JNO. H. B. LATROBE,
For Def't.

15 May, 1862.

Commissioner's Oath.

You shall, according to the best of your skill and knowledge, truly, faithfully, and without partiality to any or either of the parties, take the examination and depositions of all and every witness and witnesses, produced and examined, by virtue of the commission hereunto annexed, upon the interrogatories now or which may hereafter, before the said commission is closed, be produced to, and left with you or any two of you by either party; so help me God.

CHAS. WALTER,
Justice of the Peace.

Clerk's Oath.

You shall truly, faithfully, and without partially to any or either of the parties, in this cause, take, write down and transcribe the depositions of all and every the witness and witnesses, produced before and examined by the commissioner named in the commission hereunto annexed, as far forth as you are directed and employed by the said commissioner to take, write down and transcribe the said depositions or any of them, so help me God.

15 *Depositions.*

Augustus Steiger, a witness produced on the part and behalf of the plaintiff, having been first duly sworn according to law, defers and says in reply to interrogatories, as follows:

1. To the first interrogatory he answereth: I know the parties, that, is I know there is such a company as the Baltimore and Ohio Railroad Company, and I know William Patterson, personally; William Patterson was at one time a government teamster, and I am informed is now a superintendent of wagon repairs.

2. To the second interrogatory he answereth: I was present at the the time that the plaintiff's arm was injured in the month of March; somewhere about the middle of the month, I was loading my wagon, and W. Patterson was alongside my wagon, assisting me in straightening the front bolster of my wagon; while we were putting the timber on, Patterson's team was near by, standing heading towards the railroad depot, and my team heading the opposite direction; while he engaged he called out to me, "Steiger," look out for your team, there is an engine coming; this was the first notice I had that an engine was approaching; I ran to my leaders to take care of my team, and he ran to his and seized them; before he reached them they had jumped on a pile of scantling on the track; just then I saw the cars strike him, Patterson, and he fell; his team jumped clear around and ran up the street. The first I saw of the train was when the
16 alarm was given by Patterson; the train was coming from the depot up Indiana Avenue; there was no whistle blown, nor warning given, nor bell rung. The engine was pushing the train before it, and Patterson was struck by the car first in the train, that is, the car furtherest from the engine. I can't say that any warning was given to the conductor that any one was on the track, nor what his answer was; when I first saw the locomotive it was about one hundred and fifty yards off, this happened in Indiana Avenue, which was then used by the railroad company as a side track for unloading and loading cars. I can't say how he was injured; I gave attention to my own team; he was at that time a teamster employed by the government, and the injury mentioned was not as to permanently disable him from his occupation as teamster. This all happened in the City of Washington. I omitted to state that I saw no man on the train except on the locomotive, there was no man on the near car, the first car as the train approached.

Cross.

To the first cross-interrogatory he answereth: I am a teamster under the government.

Cross.

To the second cross-interrogatory he answereth: I wss behind my wagon to help to load it; I was about twenty feet from the place where the injury was done, in a direction nearer to the depot.

Cross.

To the 3rd cross-interrogatory he answereth: It was a train of coal cars, as far as I could see.

17 *Cross.*

To the 4th cross-interrogatory he answereth: He was struck down by the leading car. I saw him fall. I don't know how far the train moved, but not very far.

Cross.

To the 5th cross-interrogatory he answereth: I had not paid attention to the movement of the train. Nothing particularly called my attention to the accident. I was engaged at the same place, and I saw it as I would see anything else that took place. I did not notice his position particularly, except that he was endeavoring to get his team out of the way.

Cross.

To the 6th cross-interrogatory he answereth: He was taking care of his team.

Cross.

To the 7th cross-interrogatory he answereth: I know nothing further.

AUGUSTUS B. SLAIRKER.

Jno. Collins, a witness produced by and in behalf of the plaintiff, having been first duly sworn according to law, deposes and says as follows, in reply to interrogatories:

To the 1st interrogatory he answereth: I know there is such a company as the Baltimore and Ohio Railroad Company. I know William Patterson now, but did not know him when he was injured.

To the 2nd interrogatory he answereth: I was present, assisting in loading some government wagons with lumber, which was my business. At the time the train was coming, some one of the
18 drivers called to Patterson to look out for his team. He went to his team and took hold of his horses when they turned and faced towards the track, and the next thing I saw was that Patterson was struck down and was under the cars. I saw three cars pass over him, and went to the engineer and told him that a man was killed by the cars, and that he ought to stop them. He heard me but would not stop the cars. I thought at the time that his, Patterson's, body was under the cars, until I heard him halloo. There was a low pile of lumber between me and him, and when I went to him I found that his arm only was on the track. We could not tell at the time whether the train coming from the depot was coming up the track, or was going to switch off into this track, on which it was

running. There was no whistle blown, no bell rung, no warning given, nor was there any men on the cars to give warning. Plaintiff, at the time, was a government teamster, and employed as such. By this injury he lost his arm, and was permanently disabled from following the occupation of teamster. He lost his arm near the shoulder.

Cross.

To the 1st cross-interrogatory he answereth: I am a laborer.

Cross.

To the 2nd cross-interrogatory he answereth: It was a burden train. I can't say what kind of cars they were positively, but I think some of them were coal cars.

Cross.

19 To the 2nd cross-interrogatory he answereth: I was about thirty feet off, nearly opposite to Patterson, and, if anything, a little nearer to the depot.

Cross.

To the 4th cross-interrogatory he answereth: By the leading car he was struck, but I think three cars altogether passed over him. It moved only a little way.

Cross.

To the 5th cross-interrogatory he answereth: I had not been paying attention to the movement of the train. Nothing particular called my attention to the accident. I had not noticed the plaintiff's position. I only saw him attempting to take care of his team.

Cross.

To the 6th cross-interrogatory he answereth: As far as I saw, he was holding his horses by the head.

Cross.

To the 7th cross-interrogatory he answereth: Nothing.

his
JNO. × COLLINS.
mark.

Attest: W. B. WEBB.

William T. Dewdney, a witness produced on the part and behalf of the plaintiff, having been first duly sworn according to law, deposes and says, in answer to interrogatives as follows:

To the first interrogatory he answereth: I know William Patterson, and know there is such a company as the Baltimore and Ohio Railroad Company. I do not know what the present occupation of the plaintiff.

To the second interrogatory he answereth: I was present
20 at the time that the plaintiff, William Patterson, was injured. I think it was on the 11th day of March, 1862. I was standing about thirty feet from the place where the accident happened. I saw the train coming, and immediately turned and told the teamsters to look out for their teams. I did not think that the train was coming up upon the track where the teams were standing. One track comes up Indiana avenue towards City Hall, and the other, the main track, runs down First street to the avenue. Several trains had already come down the main track, and I supposed this train would follow them. There was a man running alongside of the coming train, and it was as much as he could do to keep up with it, and change the switch so as to suddenly throw the train on the Indiana avenue track. It continued at the same rate of speed up towards the wagons, which were about two or three hundred feet off from the switch. It was at these wagons that Patterson was employed. Patterson, at the time, that is, after the train had passed the switch and I had turned around to look at him, had hold of his horses, trying to keep them from running on to the track. I then turned around and hallooed to the engineer, as did half a dozen others, and waved my hat at him to stop. I think he must have seen me, for I was standing fourteen or fifteen feet off the track, and the locomotive ran right by me. The cars were coal-hopper cars.

Patterson was holding his horses with his back towards the
21 train, when the first car struck him a little below his shoulder, turning him completely around, and knocked him upon the ground, between a little pile of lumber and the track, with his left arm upon the track, and his legs upon the lumber. The whole team of horses wheeled directly around and ran away up the street. I thought Patterson was killed, and was so shocked that, for a few minutes, I did not move. I saw his legs move, ran up to him, and picked him up. All that he said was: "Oh, my poor arm!" His arm was cut almost entirely off, and I picked him up and helped to put him into a wagon. There was no whistle blown, no bell rung, nor warning of any kind given, nor was there any one upon the train to give warning of its approach. The engineer took no notice of the warning given to him, and had plenty time to have stopped the train. I did not see him put down the brakes, or shut off the steam, or do anything to stop or check the speed of the train. It is up grade from the switch. Patterson was, at the time of the injury, a teamster in the employ of the government, and since that time has been wholly unable to pursue that occupation. At the time, he was engaged in loading wagons with lumber that had been brought there by the cars. The injury occurred in Indiana avenue, in Washington City, which was used by the railroad company at the time as a siding for the delivery of freight, both to the government and individually.

After Patterson was struck, myself and several others sung
22 out to the engineer that there was a man killed, and three cars passed over Patterson before the train stopped. When insignalled to the train, the horses were going round towards the track, dragging Patterson, and we were afraid that he would be hurt. Had Patterson's face been turned towards the train, or had he had any warning from the train, he could, by letting the horses go, have saved himself. His horses had frequently been frightened by the noise of cars going down the other track, and he had no means of knowing that they had switched off on the side track.

Two or three days afterwards, we had thrown off a load of scantling at this track, first about the same place where the injury was done, and the same engineer came up with a train, and cried out to us, Damn you, *clear the track*, or *I'll run over you.* (Ruled out. Exception.)

If the engineer had used ordinary care, he could not have helped seeing Patterson's danger. I am near than twenty-one year of age, and am not interested in this suit. The train that passed over Patterson was loaded with coal, and the engineer uncoupled the locomotive from it, and left it standing where it stopped.

Cross I. To the first cross-interrogatory he answereth: I am a carpenter, at work on the treasury extension.

Cross II. To the 2nd cross-interrogatory he answereth: I was standing in a southeast direction from Patterson, about thirty
23 feet.

Cross III. To the 3rd cross-interrogatory he answereth: It was a burden train of coal cars.

Cross IV. To the 4th cross-iuterrogatory he answereth: He was struck by the leading car.

Cross V. To the 5 cross-interrogatory he answereth: I was looking directly at the train; my attention being called to it by its switching off of the main track; all I noticed about the plaintiff was, that he was holding on to his horses.

Cross VI. To the 6 cross-interrogatory he answereth: He was trying to keep his horses from going on the track.

Cross VII. To the 7 cross-interrogatory he answereth: I don't know anything else.

W. T. DEWDNEY.

Philip W. Fowler, a witness produced on the part and behalf of the plaintiff, having been first duly sworn according to law, deposes and says, in reply to interrogatories as follows:

To the first interrogatory he answereth: I know Mr. Patterson well, and he was at the time of the injury a teamster under me, as wagonmaster in the government employ; a most excellent teamster, capable of managing any team, and the most careful man in the whole train. I know there is such a company as the Baltimore and Ohio Railroad Company.

24 To the second interrogatory he answereth: I did not see the accident, and know nothing about the circumstances; I

know that William Patterson was so injured as to be totally disabled from pursuing his occupation as a teamster; and from my knowledge of him and his efficiency, I should say that two thousand dollars would not be a sufficient compensation to him for his loss mentioned by reason of the injury. He was a reliable man; that if any special duty had to be performed, requiring a single team, and a cautious prudent head, I always selected Mr. Patterson to do it.

Cross I. To the 1 cross-interrogatory he answereth: I am wagon-master in government employ.

Cross II. To the 2 cross-interrogatory he answereth: I was at the stable at the time the accident occurred.

Cross III. To the 3 cross-interrogatory he answereth: Know nothing about it.

Cross IV. To the 4 cross-interrogatory he answereth: I know nothing.

Cross V. To the 5 cross-interrogatory he answereth: I know nothing.

Cross VI. To the 6 cross-interrogatory he answereth: I do not know.

25 Cross VII. To the 7 cross-interrogatory he answereth: I know nothing further.

PHILIP W. FOWLER.

26 And the said plaintiff, by his attorney aforesaid, files in court here the following letters: If the jury shall find from the evidence that, on the 11th March, 1862, a train of cars was being pushed by an engine of the defendants, upon a tract connected with the Washington branch of defendant's road, in Indiana avenue, a public street of the city Washington, near the station of defendant in the city, and that the plaintiff at that time had charge of a team, which was standing near the said track; and that as the said train approached the horses of said team became alarmed, when the plaintiff seized hold of the head of the off leaders, on the off side, for the purpose of controlling the team, and that in the attempt to do so the plaintiff fell, and his arm was crushed by the passing train; and if the jury shall believe that on seizing the off leader, on the off side, the plaintiff did not use ordinary care and skill as a teamster, and that in consequence thereof he was thrown in his attempt to control the horses, and was injured, then the plaintiff is not entitled to recover.

27 WASHINGTON, *March* 11, 1862.

W. P. SMITH, Esq.,
Master of Transportation.

SIR: At between half-past ten and eleven o'clock this morning, as engine 55, run by H. Shaffer, was *pushing* some 9 loads of coal up Indiana avenue, a teamster and his team were standing near the track, the horses became frightened, and the driver, taking hold of the head horses, *was thrown by them upon the track*, the whole of a

hopper, or perhaps hoppers, passed over his arm, smashing it dreadfully. I sent Messrs. Collins and Darby to the spot immediately, but when they arrived the man had been removed. It was a government team; could not learn his name, nor anything about him. Mr. Collins will go and ascertain more fully the condition of the man and other particulars.

Very respectfully,

B. L. JACOBS.

JOHN W. GARRETT, Esq.

DEAR SIR: The circuit court of the United States sits on Monday, and if the case which I presented to your consideration lately is not to be arranged without suit, I am not at liberty to allow this term to go by it. I am aware of the great pressure on your attention, and fearing it may have driven this matter from your mind, I respectfully request a reply touching Patterson's claim.

Very respectfully, your obe'd serv't,

H. WINTER DAVIS.

3 APRIL, '62.

28 JOHN W. GARRETT, Esq.,
Pres't B. and O. R. R.

DEAR SIR: I am instructed by my client, Mr. William Patterson, to present his claim for damages against the Baltimore and Ohio Railroad Co., of which you are president, for injuries recently sustained by the act of one of the engineers in the employ of your company, near the Washington City station.

Mr. Patterson was in the service of the government, as a wagoner or teamster, and while in charge of his team was run over by a train of cars in charge of one of your engineers, and his left arm was cut off by the cars, and it has been amputated above the elbow. The engineer gave no notice of his approach. The bystanders called to the engineer and gave him notice of the danger of Mr. Patterson, whose horses were restless and who was engaged in attempting to control them.

The injury is a serious one, to a young and industrious and honest man, and he naturally expects a fair indemnity from the company; and he is confident that the high character of those in charge of the company will not permit him to be driven to the slow and costly process of the law for redress. I shall feel much obliged to you for a reply to this note at your earliest convenience. My impression is that the name of the engineer is Wm. Sadler.

Very respectfully, your obe'd serv't,

H. WINTER DAVIS.

20 MARCH, 1862, *Baltimore.*

29 WASHINGTON, *March 31st*, 1862.

Captain COLLINS:

DEAR SIR: On Tuesday, the 11th day of March, 1862, between the hours of 10 and 11 o'clock in the morning, I was standing within

thirty feet of the railroad track, near the depot, when Mr. Patterson was knocked down and run over by the train. My attention was first attracted by the train coming at an unusual speed, and as soon as I noticed it I immediately ordered the teamsters to look out for their teams, fearing a collision. Mr. Patterson's team was facing the track. It turned short to the left, and the train at that moment struck Mr. Patterson on the right side, and knocked him down on the track. It is necessary that this statement should be sworn to. I am ready to make affidavit of the above facts.

Respectfully yours, &c.,

WM. T. DEWDNEY.

Marginal note.

Collins says, Patterson stumbled over a pile of government lumber lying on ground and taken from cars.

BALTIMORE AND OHIO RAILROAD,
President's Office, Baltimore, 20 March, 1862.

W. P. SMITH, Esq., M. T.

DEAR SIR: I send you, by direction of the president, with this, a letter from Hon'l H. W. Davis, of this date, in reference to a claim of Mr. William Patterson, for injury sustained, and he requests that you will have a thorough investigation made in the case, and report fully on it with all convenient despatch.

Yours, respectfully,

H. W. EVANS.

WASHINGTON, *March* 27, '62.

W. P. SMITH, Esq.,
Mass. of Trans.

SIR: The circumstance of the accident to gov'r teamster, of which you write me, was, as far as I can learn, as follows: Engine No. 55 was tacking a train of coal-hoppers, seven in number, on Indiana av., and was going slow, when the horses attached to a government wagon standing on the av. became restive, and the driver, in attempting to restrain, was thrown upon the track, and three cars passed over his arm. Joseph Harding, the conductor, says that the cars did not hit him, but the horses ran upon a pile of lumber and threw him. I saw the man the next day, and remarked to him that we were both old teamsters, and were, perhaps, a little too eager to look out for our teams, regardless of ourselves. I think no blame can be attached either to the engineer or conductor, as both of them did the best they could to stop, and will be seen by but three cars passing over him. W. T. Dewdney saw the accident, and will make a statement, in writing, of the case, which I will send you as soon as I can get it; (the coal was not for gov.) The team was loading gov. lumber at the time on the av.

Very respectfully,

JOHN COLLINS.

31 Know all men by these presents, that the Baltimore and Ohio Railroad Company, for divers good causes and consideration, have released, and by these presents do release, acquit, exonerate, and discharge Joseph W. Harden, Franklin Helms, and Henry Sheffer, from all claim or demand which the said company ought or could have against them, or either of them, growing out of their conduct, in any respect, or the conduct of either of them, in connection in any manner with the happening of an accident, whereby William Patterson was injured in his person by the cars of said company, on or about the 11th day of March, 1862, in the city of Washington.

In testimony whereof the said company has hereto set its seal and caused its president to affix his signature, this fourteenth day of November, 1862.

JOHN. W. GARRETT, *Pres't.*

Signed, sealed, and delivered in presence of—
JNO. H. B. LATROBE.

PATTISON
vs.
B. & O. R. R.

Joseph W. Harden, conductor of freight train, on 26th March, 1862, was backing unto track on Indiana avenue, on the south side, and there was a pile of boards about 12 or 18 inches high. Henry Schaeffer had 10 hoppers ahead; was pushing the train up grade, on the right side of the engine; the accident on the left. Patterson was with a team, head on, as it were, to the boards, and standing near the boards, and standing near the leaders. The off-leader took fright. Patterson having the rein in his left hand, stumbled and fell on his knees and nose. Patterson was thrown on the *the* pile of
32 boards, and rolled on to the track, his arm coming under the wheels, when it was injured. The cars going at a slow walk; two cars had passed safely before Patterson fell, and the third, 4th, and 5th ran over him, and the cars was stopped going that distance. Witness waved when he saw the horses frightened; put down brakes, and ran back, and the train was stopped in the length of three cars. Franklin Helems —— brakesman ———— Henry Schaeffer ——— engineman ——— John Collins to get me the papers. Collins spoke afterwards to Patterson, who seemed to blame no one in particular. Cars moving a little too fast. I told him he had held on too long. He said that was probable ———— Collins to bring me a man who saw the affair, and who made a similar statement.

Helms ————————.

Whereupon, for trying the issue aforesaid, it is ordered by the court here, that 20 persons from panel of district jurors returned to the court, have, by the marshal of the district aforesaid, be drawn by ballot, according to the form of the statute in such cases made and provided; and thereupon the 20 persons being so drawn by ballot, and written upon two lists—one of which said lists is delivered to the counsel for the respective parties; and the counsel for each of the

said parties having stricken out four persons from the said lists; thereupon the remaining twelve persons being called, come, to wit: 1. Richard Loane, 2. John E. Lamb, 3. Nicholas Stiltz, 4. Nicholas Hatchions, 5. John McComas, 6. Adam Keller, 7. William Biershing, 8. Andrew Swartz, 9. Franklin Mace, 10. James C. Douty, 11. Geo. W. Feelmyer, 12. Marcy Beckford.

33 Who, being empanneled and sworn to say the truth in the premises, upon their oath do say, that the said Baltimore and Ohio Railroad Company is guilty of premises, in manner and form as the said William Patterson above against it had complained, and they assess the damages of him the said William Paterson, by occasion of the premises, in the sum of six thousand dollars, current money. Therefore it is considered by the court here that the said William Patterson recover against the said Baltimore and Ohio Railroad Company, as well the sum of six thousand dollars, current money, his damages aforesaid, by the jurors aforesaid, in form aforesaid, assessed at the sum of $ by the court hereunto him on his assent adjudged, for his costs and charges, by him about his suit in this behalf laid out and expended; and the said Balttmore and Ohio Railroad Company in money, &c.

The defence, by its attorney aforesaid, pray the court here to grant a new trial in the above cause, and makes a motion to that effect.

In the circuit court of the United States, Maryland district.

WILLIAM PATTERSON
vs.
THE BALTIMORE AND OHIO RAILROAD CO.

The defendant, by their counsel, pray the court to grant a new trial in the above cause, and makes a motion to that effect.

1st. Because the verdict is against law.
2d. Because it is contrary to evidence.
34 3d. Because the damages are excessive.

JNO. H. B. LATROBE,
For Defendant.

Nov. 19, 1862.

For that it appears to the court here that the said verdict is in no wise insufficient or erroneous, and that the same ought not to be quashed, and that no new trial ought to be had issue aforesaid. The defendant, by its attorney aforesaid, files in the circuit court here the following pray, to wit:

WILLIAM PATTERSON
vs.
THE BALTIMORE AND OHIO RAILROAD COMPANY.

The defendant prays a writ of error to the superior court in the above case.

JNO. H. B. LATROBE,
For Defendant.

DECEMBER 9, 1862.

And now here at this day, to wit, 9th day of December, the year of our Lord 1862, the said Baltimore and Ohio Railroad Company produced to the said circuit court here the writ of the United States of America, for the correcting of errors of and upon the premises commanding the record and proceedings aforesaid of the judgment.

35 THE UNITED STATES OF AMERICA, *ss:*

The President of the United States to the judges of the circuit court of the United States for the fourth circuit in for the Maryland district, greeting:

[SEAL.] Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said court before you, or some of you, between William Patterson, plaintiff, and the Baltimore and Ohio Railroad Company, defendant, a manifest error hath happened to the great damage of the said Baltimore and Ohio Railroad Company, as by its complaint appears; we being willing that error, if any hath been, should been duly corrected, and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal distinctly and openly you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday in December next, in the said Supreme Court, to be then and there held; that the record and proceedings aforesaid, being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and custom of the United States should be done.

Witness the honorable R. B. Taney, chief justice of our Supreme Court, the first Monday in December, in the year of our Lord one thousand eight hundred and sixty-two.

Issued 9th December, 1862.

THO. SPICER, *Cl'k Circuit C't.*

36 *The United States of America to William Patterson, greeting:*

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be held at the city of Washington, on the first Monday in December next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the fourth circuit in and for the Maryland district, wherein the Baltimore and Ohio Railroad is plaintiff, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said Baltimore and Ohio Railroad Company, in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the said parties in this behalf.

Witness my hand and seal this fifteenth day of December, in the year of our Lord one thousand eight hundred and sixty-two.

WILLIAM F. GILES. [SEAL.]

I acknowledge notice of the above citation.

37 Know all men by these presents that we, the Baltimore and Ohio Railroad Company, John W. Garrett and Joshua J. Atkinson, are held and firmly bound unto William Patterson in the full and just sum of twelve thousand dollars lawful money of the United States, to be paid to the said William Patterson, his heirs, executors, administrators, or assigns, to which payment well and truly to be made and done, we hereby bind ourselves, our heirs, executors, and administrators, jointly and severally firmly by these presents.

Sealed with our seals, and dated this twelfth day of December, in the year of our Lord one thousand eight hundred and sixty-two.

Whereas, at a circuit court of the United States for the fourth circuit in and for the Maryland district, begun and held at the city of Baltimore, on the first Monday in November, in the year of our Lord one thousand eight hundred and sixty-two, the said William Patterson, by the judgment of the same court, recovered against the Baltimore and Ohio Railroad Company the sum of six thousand dollars for his damages, as also the sum of , for his costs and charges by him about his suit in that behalf laid out and expended;

And whereas the said Baltimore and Ohio Railroad Company hath sued out the writ of the United States of America for the correcting of errors, and a citation directed to the said William Patterson, citing and admonishing him to be and appear at a Supreme Court of the United States, to be held at the city of Washington, on the first Monday in December next, to show cause, if any there be, why the judgment so as aforesaid rendered, as in the said writ of error mentioned,

38 should not be corrected, and why speedy justice should not be done to the parties aforesaid in that behalf.

Now, the condition of the above obligation is such, that if the said Baltimore and Ohio Railroad Company shall well and truly prosecute with effect its said writ of error and pay to the said William Patterson, his heirs, executors, administrators, or assigns, the damages, costs, and charges adjudged to the said William Patterson by the said circuit court, and also all such damages, costs, and charges as may be awarded to the said William Patterson by the said Supreme Court, in case the said Baltimore and Ohio Railroad Company shall fail to make good its said plea, then the above obligation to be void and of none effect, otherwise to be in full force and virtue in law.

J. W. GARRETT, *Pres't.* [SEAL B. & O. R. R.]
J. W. GARRETT. [SEAL.]
J. J. ATKINSON. [SEAL.]

Signed, sealed, and delivered in presence of—
JOHN KING, JR.

39 In pursuance whereof, and in accordance with the form and effect of the statute in such case made and provided, a transcript of the record and proceedings of the judgment aforesaid, so as aforesaid rendered, with all things concerning the same, with the said writ of error, are hereby transmitted to the Supreme Court accordingly.

In testimony that the aforegoing is a true copy taken from the record and proceedings of the circuit court aforesaid, I hereunto subscribe my name and affix the seal of the said circuit court, this fourth day of December, in the year of our Lord one thousand eight hundred and sixty-three.

[SEAL.]

THO. SPICER, *Cl'k Circuit C't.*

Filed 12th December, 1862.